

**FLATHEAD COUNTY PLANNING AND ZONING
STAFF REPORT FLV-12-03
RONALD & GAYANN CALDBECK
REQUEST FOR LAKESHORE MAJOR VARIANCE
July 26, 2012**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Ronald & GayAnn Caldbeck for three separate variances to the Flathead County Lake and Lakeshore Protection Regulations: Section 4.3(2)(a)(2) stating docks shall not exceed 60 feet in length; Section 4.3(B)(2)(c)(1) requiring private marinas to have a minimum 250 feet of lake frontage; and, Section 4.3(B)(2)(a) requiring a minimum of 100 feet to remain open between docks and the side riparian boundary. The subject properties are located at 7070 and 7074 Highway 93 South in Lakeside. ***Please note: if the major variance is approved, this variance report serves as the Lakeshore Construction Permit, and a separate lakeshore permit will not be required.***

The Planning Board will hold a public hearing in the Earl Bennett Building conference room at 1035 First Avenue West, Kalispell on August 8th, 2012 to review the proposal and make a recommendation to the Flathead County Commission. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, located in the Earl Bennett Building at 1035 First Avenue West, Kalispell, Montana.

I. APPLICATION REVIEW UPDATES

A. Lakeside Land Use Advisory Committee

This section will be updated after the Lakeside Community Council meeting on July 31st, 2012.

B. Flathead County Planning Board

This section will be updated after the Flathead County Planning Board meeting on August 8th, 2012.

C. Board of County Commissioners

This section will be updated after the Board of Commissioners meeting, which will be scheduled after the meeting with the Flathead County Planning Board.

II. GENERAL INFORMATION

A. Application Personnel

i. Landowner

Joe Street
9163 Irish Lane
Mount Vernon, OH 43050
(740) 397-4839

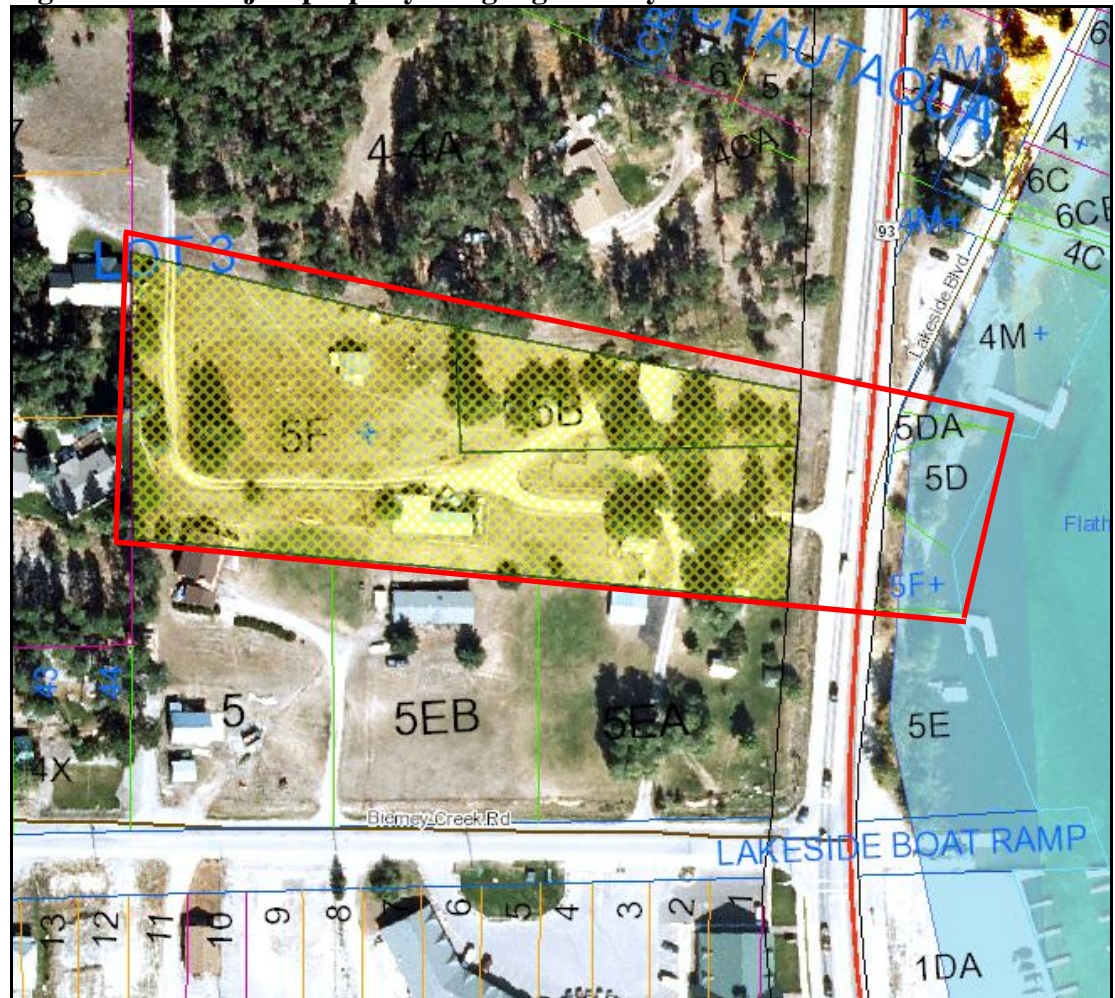
ii. Applicant:

Ronald & GayAnn Caldbeck
P.O. Box 7697
Kalispell, MT 59904
(406) 844-0410

B. Property Location and Legal Description:

The subject properties are located adjacent to the intersection of US Highway 93 and Lakeside Boulevard, on both sides of US Highway 93; approximately 300 feet north of Bierney Creek Road in Lakeside (see Figure 1 below). The physical addresses of the properties are 7074 and 7070 Highway 93, and can be legally described as Tracts 5F-WOFHIGWAY, 5B, 5DA, 5D, 5F-EOFHWY in Section 7, Township 26 North, Range 20 West, P.M.M., Flathead County, Montana. All five parcels together total approximately 3.1 acres in size. The subject properties are located adjacent to Flathead Lake and total approximately 158 feet of lakeshore frontage per Certificate of Survey 12745.

Figure 1: The subject property is highlighted in yellow.



C. Summary of Request:

On April 26, 2012, the applicant met with representatives of the Planning and Zoning Office to discuss the possibility of obtaining a Conditional Use Permit for a 'Commercial Recreation Area' within the Lakeside Zoning District. As part of the proposal, the applicant inquired on constructing a private marina on the three parcels located east of US Highway 93, adjacent to Flathead Lake. Marina is defined in the Flathead County Lake and Lakeshore Protection Regulations as "any waterfront

facility which provides for recreational boating and other water related activities.” Additionally, the lakeshore regulations separate public and private marinas into different categories. Private marinas are defined as *“a marina facility in which use is specifically limited to an adjacent homeowners’ association (adjacent is defined as property within one-half mile of said Marina).”* During the meeting, Planning Director BJ Grieve made an interpretation that the use proposed by the applicant was similar to a private marina as the applicant was not proposing the general public to utilize the marina, and the use would be for a limited amount of people, similar to a homeowner’s association. The Planning Office staff indicated that this activity would not be a possible use on the subject property as the property lacked the required amount of lakeshore frontage for a private marina, and the subject property did not have the necessary frontage to meet the required amount of setbacks from the side riparian boundaries.

The applicant decided they would apply for a variance to the sections of the lakeshore regulations which they could not meet. Depending on their proposed dock design, staff also informed the applicant they may need a third variance to the lakeshore regulations, as docks may only be 60 feet long. The applicant also discussed the possibility of installing a private boat ramp on the subject property; however that would require a fourth variance to the lakeshore regulations, which at this time they have decided not to pursue. Planning Director Grieve determined that the applicant’s request would require a major variance as the proposal deviates substantially from the construction and design standards of the lakeshore regulations. The Flathead County Lake and Lakeshore Protection Regulations state that if the planning staff determines a major variance is involved, it shall notify the governing body (Board of County Commissioners), and the governing body shall determine if the request does require a major variance. On May 1, 2012, the applicant’s request was presented to the Board of County Commissioners, who unanimously voted that the request is a major variance to the lakeshore regulations, and should be processed accordingly.

At this time, the applicant is requesting three variances to the Flathead County Lake and Lakeshore Protection Regulations (FCLLPR) in order to operate a boat rental business within a ‘private marina facility.’ The requested variances include Section 4.3(A)(2)(a)(2), Section 4.3(B)(2)(c)(1), and, Section 4.3(B)(2)(a) of the lakeshore regulations. The subject property includes three separate tracts of record on the east side of US Highway 93, with a total lakeshore frontage of 158.33 feet per Certificate of Survey 12745. The applicant’s submitted proposal includes constructing an ‘F’ shaped piling dock, approximately 72 feet long by 6 feet wide, with a breakwater wing 30 feet long by 6 feet wide, and two slip wings 30 feet long by 3 feet wide. According to Section 4.3(B)(2)(c)(3) FCLLPR regarding private marinas, *“The maximum length of each individual wing dock forming the boat slip shall not exceed 20 feet.”* Therefore, each slip wing may only be 20 feet long by 3 feet wide, and will be conditioned as such since a variance was *not* requested to deviate from *this* specific requirement. The proposed dock (with the modified slip wing lengths) will include approximately 732 square feet of impervious coverage, which is within the allowance for the property’s lakeshore frontage. The dock will be located approximately 40 feet from the northern side riparian boundary line, and 70 feet the southern side riparian boundary line.

SECTION(S) OF LAKESHORE REGULATIONS FROM WHICH VARIANCE(S) ARE REQUESTED:

The applicant is requesting a variance to the following sections of the Flathead County Lake & Lakeshore Protection Regulations:

1. **Section 4.3(A)(2)(a)(2)**, *Docks shall not exceed sixty (60) feet in length if there is five (5) feet of water depth at the end of the dock when the lake is at its mean annual high water elevation.*
2. **Section 4.3(B)(2)(c)(1)**, *Each marina shall have a minimum of 250 feet of lake frontage.*
3. **Section 4.3(B)(2)(a)**, *A minimum of 100 feet shall remain open between any dock structure and the side riparian boundary.*

D. Compliance with Public Notice Requirements

Notification was mailed to property owners within 300 feet of the subject property on July 13, 2012, pursuant to Section 5.1(B)(2)(f) of the Flathead County Lake and Lakeshore Protection Regulations. Legal notice of the public hearing on this application was published in the July 22, 2012 edition of the Daily Interlake.

E. Agency Referrals

Section 5.1(B)(2) of the Flathead County Lake and Lakeshore Protection Regulations does not specify under the review procedure for a major variance if agency referrals are required to be mailed. However, after examining the review procedure again on July 18, 2012, planning staff determined that agency referrals should be mailed to interested agencies because the regulations state that *“the environmental impact statement shall be made available...to agencies or organizations that may have an interest in the proposed project.”* Agency referrals along with a copy of the Environmental Impact Statement were sent to agencies listed below on July 18, 2012 regarding the variance requests.

- Flathead County Parks & Recreation Department
 - Reason: The subject property is located adjacent to an established County park and public boat launch.
- Montana Fish, Wildlife and Parks Department
 - Reason: The proposed project has the potential to impact wildlife habitat and species.
- Montana Department of Natural Resources and Conservation
 - Reason: The water in Flathead Lake is managed by the DNRC.
- United States Army Corps of Engineers
 - Reason: The proposed project has the potential to impact wetland areas.
- United States Fish & Wildlife Service
 - Reason: The subject property is located near areas protected by the USFWS.
- Montana Department of Environmental Quality
 - Reason: The proposed project has the potential to impact the water quality of Flathead Lake.

III. COMMENTS RECEIVED

A. Public Comments

No written public comments have been received to date regarding the proposed project. It is anticipated any individual wishing to provide public comment on the proposal will do so during either the Lakeside Community Council meeting on July 31, 2012 or at the Flathead County Planning Board public hearing scheduled for August 8, 2012. Any written comments received following the completion of this report will be summarized during the public hearings, and provided to the Planning Board and Board of County Commissioners.

B. Agency Comments

Section 5.1(B)(2) of the Flathead County Lake and Lakeshore Protection Regulations does not specify under the review procedure for a major variance if agency referrals are required to be mailed. After examining the review procedure again on July 18, 2012, planning staff determined that agency referrals should be mailed to interested agencies because the regulations state that *“the environmental impact statement shall be made available...to agencies or organizations that may have an interest in the proposed project.”* Therefore, on July 18th, 2012 staff mailed a copy of the environmental impact statement, the submitted application, and the proposed site plan to the agencies listed above, allowing them a total of 3 weeks to review the proposal prior to the meeting by the Planning Board. At this time, no written agency comments have been received to date regarding the proposed project. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

IV. CRITERIA REQUIRED FOR CONSIDERATION

There are no unique criteria set forth in the Flathead County Lake & Lakeshore Protection Regulations Section 5.1 specifically regarding Major Variances to determine findings of fact and evaluate the variance requests. However, Section 5.1(A)(1) does list criteria for the evaluation of minor variances. As this request for a major variance is actually three minor variances, each variance will be reviewed below using the criteria established for minor variances. Additionally, the section of the regulations which outlines the review procedure for major variances states that when a determination of a major variance exists, the applicant shall prepare an environmental impact statement. Section 5.1(B)(2)(b) of the lakeshore regulations states the specific criteria that the environmental impact statement shall contain, including any anticipated impacts as they relate to each of the Policy Criteria. Along with the required variance criteria, staff and other agencies will also review the Environmental Impact Statement.

1. Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.

The term ‘hardship’ is not defined within the Flathead County Lake and Lakeshore Protection Regulations. As the criteria for a variance specifically requires staff to determine if a hardship exists, a definition need to be established. Typically, the term ‘hardship’ relates to a denial of a reasonable use. Reasonable use is a subjective interpretation but may include common or customary uses in the area. The first variance requests for the dock to extend approximately 72 feet

out into Flathead Lake. The applicant has indicated in their submittal that if the dock was required to comply with the regulations, the slip closest to the shoreline would be unusable as the shoreline at the property location slopes gently downward. The applicant is proposing the dock to accommodate 4 individual slips, all on one side of the dock. The Flathead County Lake and Lakeshore Protection Regulations allows for individual docks with various configurations. However, the regulations specifically state that docks which provide for boat slips on both sides of the main dock (such as a 'T' shaped dock) are not permitted. Therefore, in order to fit all 4 proposed slips on one side of the dock, the applicant is requesting a variance to lengthen the dock by an additional 12 feet. If the applicant were required to comply with the regulations, the dock would only be able to accommodate 3 slips. However, other docks located in the general area are similarly sized, and therefore it is reasonable to conclude the extended dock would not allow the applicant a use other owners in the area do not currently enjoy.

The second variance is requested because the subject property does not contain the required amount of lakeshore frontage for a private marina. The subject property is comprised of three separate tracts of record, with a combined lakeshore frontage of approximately 158.33 feet per Certificate of Survey 12745. The applicant has stated in their application that there are no other available properties within the Lakeside area which already comprises the required amount of lakeshore frontage, and there is no possibility of them obtaining the required amount of lakeshore frontage as the land located north of the subject property is owned by Flathead County (currently developed as a public park) and the land located south of the subject property is currently owned by a separate private individual. However it is difficult for staff to determine that this is a hardship because the property could still be developed with an individual residential dock of a similar size but not for use as a private marina. The lakeshore regulations state that one dock is allowed per waterfront property ownership. If the proposal was for a single residential dock, the amount of lakeshore frontage would be adequate. The regulations require the specific lakeshore frontage for private marinas in order to allow for adequate setbacks from the side riparian boundaries, which is 100 feet on both sides. Consequently, this is actually the third variance the applicant is applying for. In order to maintain 100 feet between the side riparian boundaries and the proposed dock structure, the property would be required to contain a minimum of 240 feet of lakeshore frontage. The applicant has indicated there are no available properties within the Lakeside area which already comprise the required amount of lakeshore frontage for a private marina, although staff has no way to verify this statement. It is evident from the Flathead County GIS that properties in the general area are relatively small in size, and may not contain the required lakeshore frontage. Additionally, the general area of the property is commercial since it is located very close to the downtown commercial area of Lakeside. There is only one individual property located between the subject property and the existing public boat ramp, which is adjacent to another existing commercial marina. Still, as previously stated, it is difficult for staff to determine if this request is an actual hardship, as the applicant is not necessarily being denied a reasonable use, or all reasonable use, of the property if the private marina is not allowed.

Finding #1 – Due to a unique circumstance of the sloping shoreline, the strict enforcement of the requirements regarding the dock length could potentially result in a hardship because the slip located closest to the shoreline on the proposed dock would become unusable, the applicant is proposing a dock configuration

which allows all the slips to be located on one side of the dock as required by the lakeshore regulations, and other docks located in the general area are similarly sized.

Finding #2 – Due to the location of the subject property, it does not appear the applicant has an undue hardship regarding the amount of lakeshore frontage required for a private marina and the setbacks from the side riparian boundaries because the applicant could construct an individual residential dock of a similar size but not for use as a private marina, the subject property is located adjacent to existing public facilities including a public marina and boat ramp, and staff has no way to verify if there are any other properties for sale which do contain the required amount of lakeshore frontage.

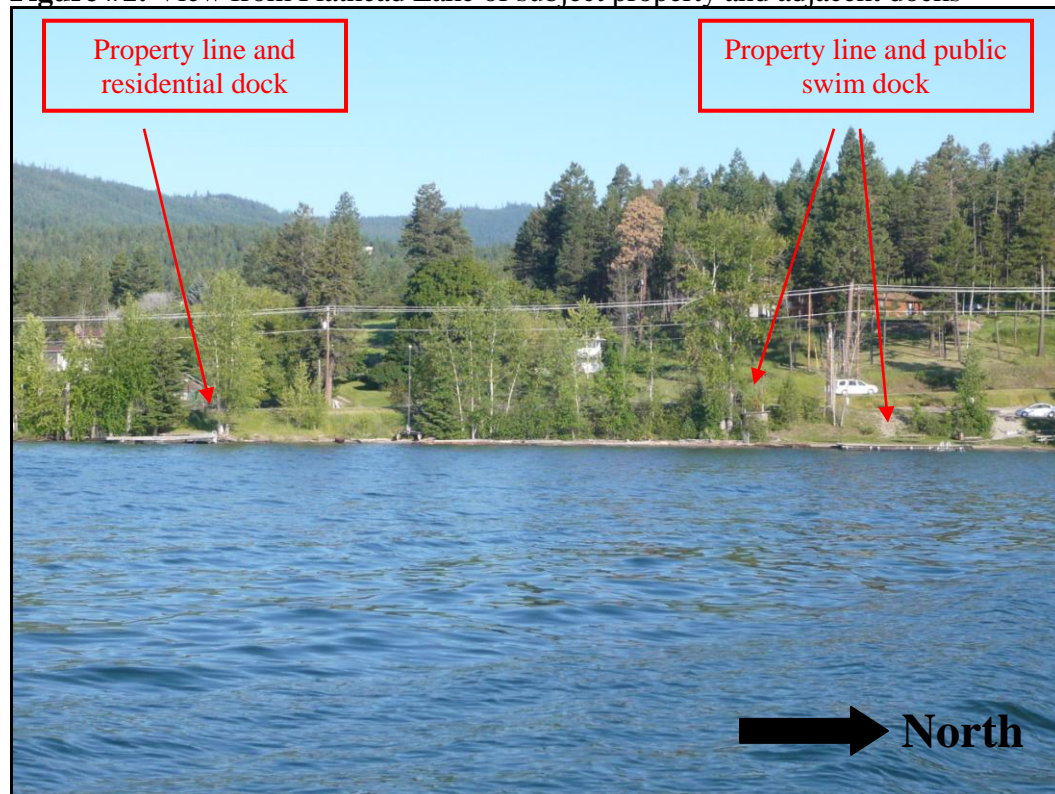
2. No reasonable alternatives exist which do meet the standards herein.

The applicant is requesting multiple variances to the Flathead County Lake and Lakeshore Protection Regulations in order to construct a private marina. The first requested variance is to allow the proposed dock to extend farther out into Flathead Lake than what is required by the lakeshore regulations. The applicant is requesting the variance due to the gentle sloping of the shoreline on the subject property. Some reasonable alternatives to meet the standards would be to have fewer slips on the proposed dock, or change the dock shape. However, the lakeshore regulations do allow for various dock configurations as long as the boat slip access is only to *one side* of the dock. Certain dock shapes, such as ‘T’ docks or other configurations, which provide slips on both sides of the dock are not permitted. [Section 4.3(A)(2)(a)(6) FCLLP]. Therefore, the proposed extension to the dock is a reasonable request due to the unique circumstances of the sloping shoreline.

The second variance requested by the applicant involves the amount of lakeshore frontage required to construct a private marina, and the third variance requested involves the setbacks required from the side riparian boundaries. The applicant has stated they believe no reasonable alternatives exist because they cannot acquire additional lakeshore frontage to comply with the minimum requirements of both sections. In order to comply with the setbacks required from the side riparian boundaries, the applicant would need to obtain an additional 82 feet of lakeshore frontage. At this time, the applicant has stated there are no other lakeshore properties with the required amount of lakeshore frontage available for sale within the Lakeside area; however staff has no way to verify this statement. As stated previously, it is evident from the Flathead County GIS that properties in the general area are relatively small in size, and the general area of the property is commercial as it is located very close to downtown Lakeside. However, one reasonable alternative may be that *no* private marina is constructed on the property given the proximity to adjacent lands. As shown in Figure 1 below, the property located to the north of the subject property is currently owned by Flathead County, and has been developed as a public park. While the property located south of the subject property is currently developed with a residential dock, the next adjacent property is a public boat ramp, which is also adjacent to an existing public marina.

Otherwise another reasonable alternative is that a property owner could build a residential dock. However, with the value of the land given its proximity to US Highway 93 and Lakeside, is not likely to be developed as single family residential. Nevertheless, given the mix of other uses in the area, including the residential and adjacent properties, this must be considered a reasonable use of the property in the Lakeshore Protection Zone in Lakeside.

Figure #1: View from Flathead Lake of subject property and adjacent docks



Finding #3 – Due to the unique characteristics of the subject property, the proposed extension to the dock is a reasonable request because of the gentle sloping of the shoreline, and dock configurations which allow slips on both sides of the dock are not permitted by the lakeshore regulations.

Finding #4 – The request for a variance to the amount of lakeshore frontage required for a private marina and the setbacks from the side riparian boundaries do not appear to meet the criteria because one reasonable alternative is that no private marina is constructed on the subject properties given the proximity to adjacent lands, and another alternative is that a residential dock is built.

3. Granting of the variance will not have adverse impacts on the lake or lakeshore in terms of the "Policy Criteria for Issuance of a Permit".

The variance requests have been reviewed by the “Policy Criteria for Issuance of a Permit” outlined below.

Section 4.1 Policy Criteria for Issuance of a Permit:

The proposed project shall not, during either its construction or its utilization:

a. Materially diminish water quality.

The applicant is requesting multiple variances to the Flathead County Lake and Lakeshore Protection Regulations in order to construct a private marina. The first requested variance is to allow the proposed dock to extend farther out into Flathead Lake than what is required by the lakeshore regulations. The applicant is proposing the placement of an ‘F’ shaped dock which would include 4 slips. In order to accommodate the 4 boat slips on the proposed dock, the applicant is requesting the dock be 72 feet long, or the slip closet to

the shore would not be usable due to the sloping of the existing shoreline. The applicant has stated they are not proposing an increase in boat traffic. Currently the applicant utilizes the existing public boat launch for the rental business. The applicant has also stated in the submitted Environmental Impact Statement that they purchased more efficient boats, and they maintain all of the boats in their fleet so as to not impact the quality of the water.

The second variance requested is to the minimum amount of lakeshore frontage necessary for a private marina, while the third variance requested is to reduce the setback required between the dock and the side riparian boundaries. The applicant has stated they will not be increasing the amount of boat traffic in the area which could potentially diminish water quality. As stated previously, the applicant currently utilizes the existing public boat launch and dock located south of the subject property. Furthermore, the applicant is not proposing any public restroom facilities, gas sales, or trash disposal areas along the lakeshore, which could possibly leak into Flathead Lake or overflow if unattended, and diminish water quality. The lakeshore regulations specifically state that *“no retail sales or rental facilities shall be allowed on the site.”* [Section 4.3(B)(2)(c)(6) FCLLPR] Therefore, the applicant is proposing all rental and retail sales or service to occur on the properties located west of US Highway 93, as part of the Conditional Use Permit application for a Commercial Recreation Area.

Finding #5 – The proposed variances do not appear to diminish water quality within Flathead Lake because the applicant has indicated they will maintain their boats to reduce any impacts on water quality, there are no public restroom facilities, gas sales, or trash receptacles proposed on-site, all retail sales and service will be located on the west side of US Highway 93, and the applicant has stated they will not be increasing the amount of boat traffic in the area more than what currently exists since they already use the adjacent public launch and dock for part of their business.

b. Materially diminish habitat for fish or wildlife.

The longer dock proposed as part of the first variance request does not appear to diminish habitat for fish or other wildlife. The proposed dock will be built as a typical piling dock, which allows for water to travel all around and under the dock. This will allow free movement of fish and other marine wildlife around the dock and within the surrounding area. Additionally, the applicant is not proposing to remove all the vegetation along the shoreline. This will continue to allow wildlife to utilize the existing trees and vegetation for habitat to the extent this occurs on-site presently. The area surrounding the subject property is not pristine wilderness. The subject property is located adjacent to downtown Lakeside, and is only two properties away from an existing public marine that has been in use for years. While the amount of total lakeshore frontage required for a private marina is not currently met (second variance request), and the applicant is also requesting a variance to the amount of side setbacks required (third variance request), this area is already utilized for commercial operations, and may be a better location to rent boats compared to other sites on the lake which are more undeveloped such as the ‘North Shore’ area, or unzoned areas such as Hughes Bay or Woods Bay which contain more residential properties.

Finding #6 – The proposed variances do not appear to materially diminish habitat for fish or wildlife because the proposed dock will allow for free movement of water and marine wildlife to travel all around the dock, the applicant is not proposing to remove all of the existing vegetation, and the subject property is located adjacent to downtown Lakeside, which is already a developed commercial area and appears to be a better location for a private marina compared to other undeveloped or residential areas of the lake such as the North Shore.

c. Interfere with navigation or other lawful recreation.

The applicant is proposing the dock to exceed the required 60 feet in length in order to accommodate 4 boat slips on one side of the dock, as required by the lakeshore regulations. Currently the applicant utilizes the existing public boat launch adjacent to the subject property for the rental business. In order to accommodate 4 boat slips on the proposed dock, it must be 72 feet long, or the slip closest to the shore will not be usable due to the gentle sloping of the shoreline at this location. Although the proposed dock will exceed the allowable length as specified in the lakeshore regulations, the dock does not appear to encroach into Flathead Lake any more than the surrounding existing docks, so as not to impede boat traffic or navigation.

The regulations require a minimum amount of lakeshore frontage for private marinas in order *“to protect the navigational rights and safety of neighboring property owners and recreational users of the lake, to insure general compatibility with the character of the area so as not to create an unwarranted disturbance or nuisance, and to protect the quality of the water and fish and wildlife habitat.”*[Section 4.3(B)(1)(a) FCLLPR] Currently, there is an existing public boat launch located south of the subject property, and a public dock and swim area directly adjacent to the north of the subject property. (See Figures 2 and 3 below) The lakeshore regulations require a minimum amount of 250 feet of lakeshore frontage for a private marina, and 100 feet between the dock structure and the side riparian boundaries. The subject property currently only has approximately 158 feet of lakeshore frontage. In order to meet the side setback requirements and construct a dock meeting all requirements, the applicant would need at least 240 feet of frontage. With the applicant’s current dock proposal, the side setbacks would only be 40 feet from the northern property line (adjacent to the public swim area) and 70 feet from the southern property line (adjacent to a residential dock). As shown in Figures 3 and 4 below, it is staff’s opinion that the distance between the proposed dock location and the existing public swim dock does not appear to be an adequate distance for safe public recreation. The applicant has indicated there will be no public using the private marina dock; however, the use is very similar to that of a parking area, except it is boat traffic and not car traffic approaching the area. While most swimmers would generally stay within the boundaries of the designated swim area, there is a possibility that some may venture outside of the area. The close location of the proposed private marina could create some interference with members of the public swimming, as it can be difficult to see swimmers’ heads bobbing in the water. Additionally, on May 10, 2012, the Flathead County Ordinance #4 regarding Park Rule Enforcement was amended to state *“No boat shall be*

operated within fifty (50) feet of the exterior boundary of a designated swimming area,” and “No power boat shall be operated or beached within a designated swimming area nor shall be operated with its motor in operation so that any portion of such boat approaches closer than fifty (50) feet to any swimmer in the water...This regulations is applicable only in water areas which are within one hundred (100) feet of the nearest shoreline and shall not apply to emergency or lifesaving situations.” [Section 0-17 and 0-18, Flathead County Ordinance No. 4] While the applicant’s proposed slips would be located on the south side of the dock, this is important to mention because not all visitors to Flathead County would be aware of the ordinance or that they are not allowed to pull up/tie off on the north side of the applicant’s dock. This could potentially cause major issues with public navigation in the area.

Figure 2: Distance of subject property to public boat launch and swim area.

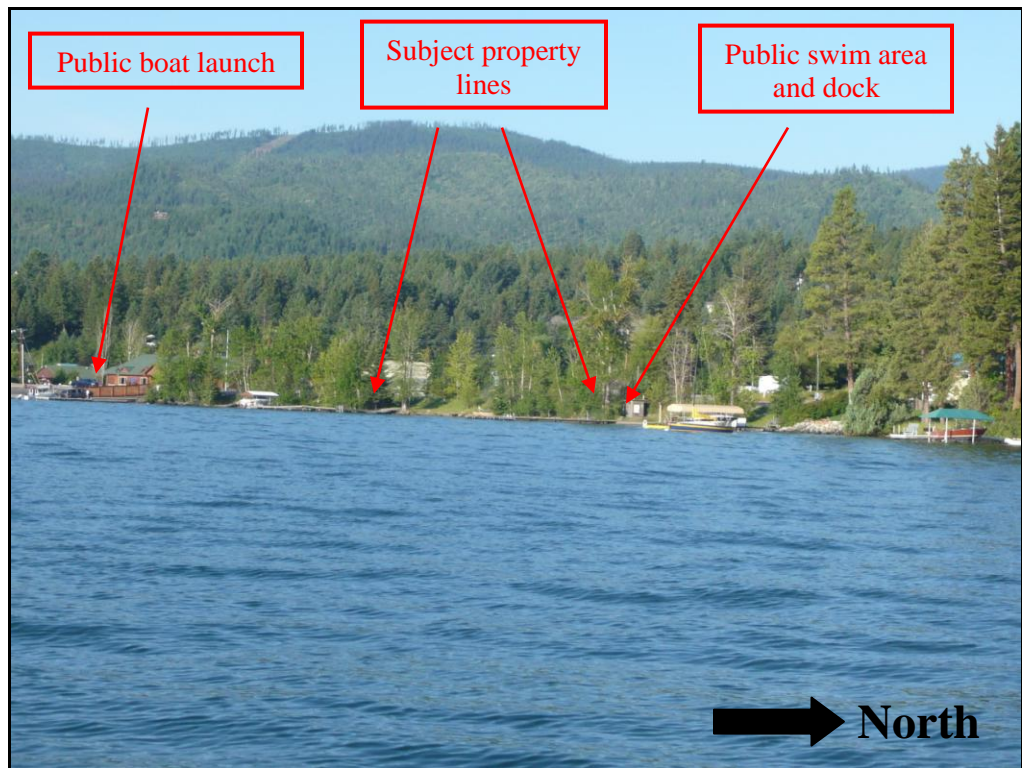


Figure 3: Public swim dock and subject property

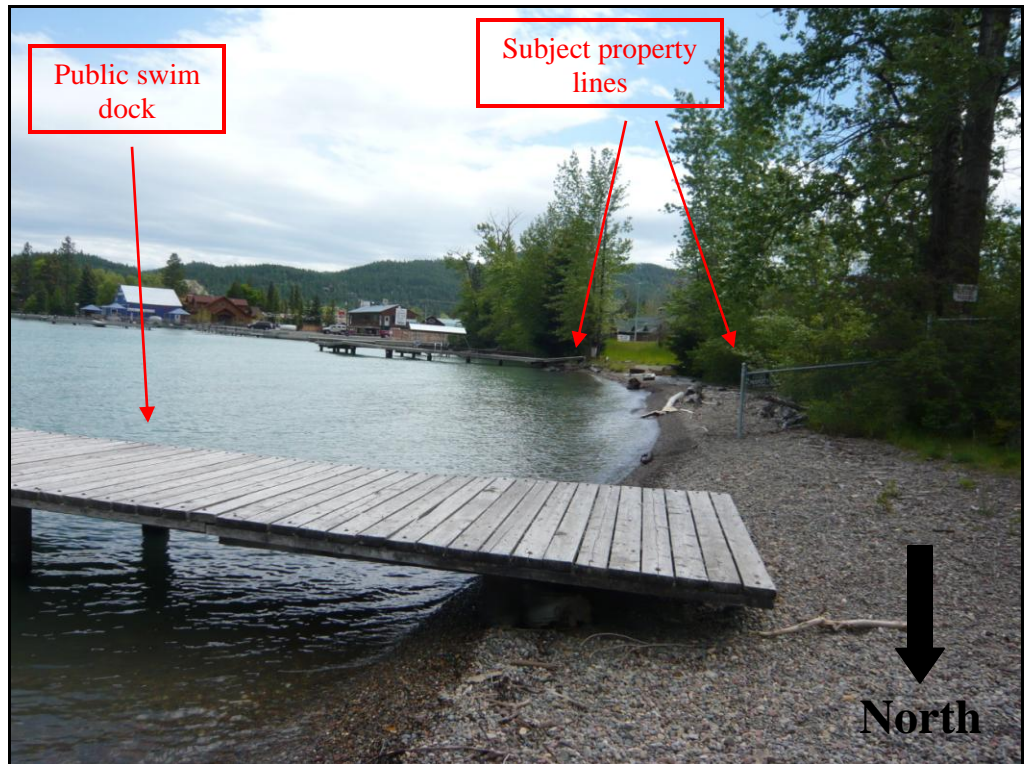
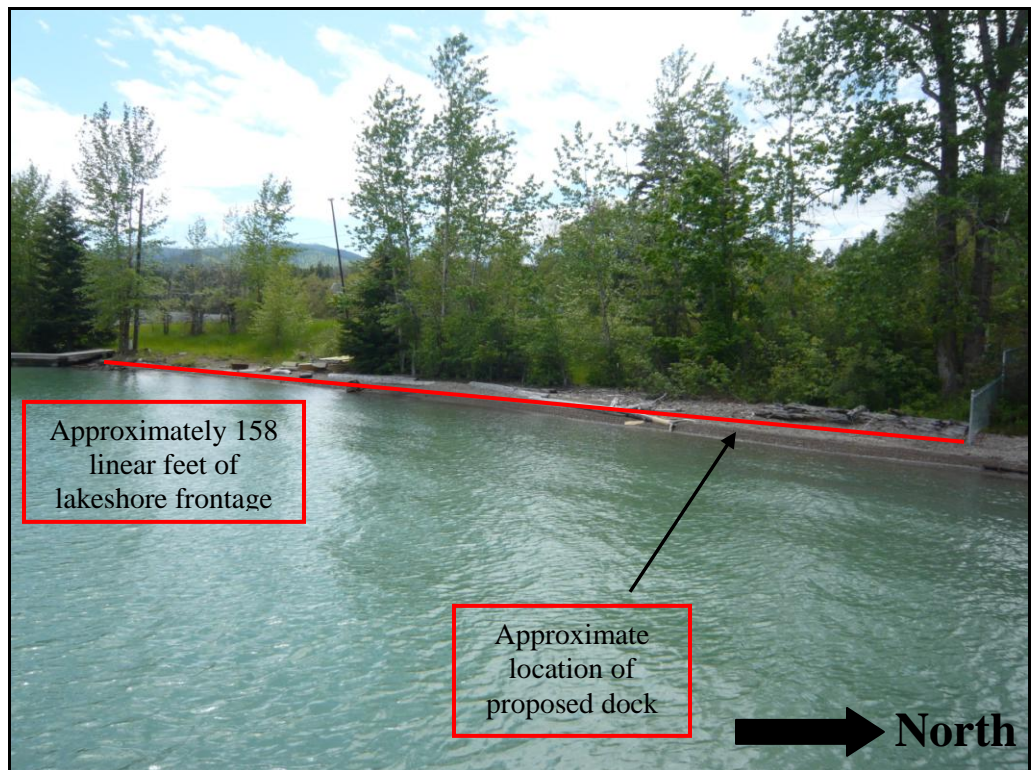


Figure 4: Approx. location of proposed dock from northern side property line



Finding #7 – Due to the unique characteristics of the subject property, the proposed extension to the dock is a reasonable request because of the gentle sloping of the shoreline, and the proposed dock will not encroach into Flathead Lake any more than the surrounding existing docks, so as not to impede boat

traffic or navigation.

Finding #8 – The proposed variances to the required minimum amount of lakeshore frontage and the side riparian boundary setbacks has the potential to interfere with navigation or other public recreation because the use is very similar to a parking area except for boats instead of vehicles, the proposed dock will only be located 40 feet from the northern side property line, the area is close to a designated public swimming area, and the amended Flathead County Ordinance No. 4 states that powered boats may not be within 50 feet of a designated swimming area.

d. Create a public nuisance.

The first variance requested proposes a private dock associated with a private marina to extend further into the lake than what the lakeshore regulations permit. It will not be utilized by the general public. Currently the property to the north of the subject property is owned by Flathead County and has been developed as a public dock and adjoining swim area. The property to the south is developed with a residential dock only. No other residential structures are located on the property. The proposed dock will be a similar length to other adjacent docks in the surrounding area in order to not create a public nuisance.

The second and third variance requests are to reduce the amount of lakeshore frontage required for a private marina, and reduce the setbacks with the side riparian boundaries. The subject property only has 158 feet of lakeshore frontage. There are no residential structures located adjacent to the subject property along Flathead Lake. The closest residential structure is located westward across US Highway 93, just to the south of the subject property. The second closest residential structure is located north of the subject property along Lakeside Boulevard. While there may not be any impact to adjacent residential structures, the property is directly adjacent to a public park and swim area on the north side. Additionally, the applicant is only proposing a setback of 40 feet from the northern property boundary instead of the required 100 feet. With the proposed dock layout, this leaves only a 70 foot setback from the southern boundary line. As stated in the section above regarding potential navigation impacts, the Flathead County Ordinance #4 states that boats may not be within 50 feet of a designated swim area. While it appears the applicant can meet this requirement, as all the proposed boat slips are located on the south side of the dock, this does create a possibility for a public nuisance, or for rental boaters to potentially be ticketed if they do not know the regulations.

Finding #9 – The proposed variance request to the overall length of the dock does not appear to create a public nuisance because the dock will not be utilized by the general public, no residential structures are located directly adjacent to the dock, and the dock will be a similar length to others in the surrounding area.

Finding #10 – The variance requested to the minimum amount of lakeshore frontage and the minimum setback requirements does have the potential to create a public nuisance because the proposed dock will only be located approximately 40 feet from the northern side riparian boundary which is directly adjacent to a public designated swim area, the amended Flathead County Ordinance No. 4 states power boats may not be within 50 feet of a designated swim area, and rental boaters may potentially be ticketed as they would not be aware of the

amended regulations.

e. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements.

The proposed dock will be located adjacent to existing docks and will therefore not increase the visual impact already associated with the lakeshore property. There may be a visual impact associated with the project when viewed from the lake; however it is similar to other areas in Lakeside. Additionally, some of the area surrounding the subject property is currently commercial, and there is an existing commercial public marina located only two properties south of the subject property. The applicant is proposing some landscaping, as well as the existing riparian vegetation to remain along the shoreline, minimizing the visual impact of the dock from the lake.

The applicant is also requesting variances to the amount of lakeshore frontage necessary for a private marina, and to the amount of open space required between the proposed dock and the side riparian boundaries. The subject property is located adjacent to a commercially developed area in Lakeside. There is only one residential property located between the subject property and an existing commercial public marina and public boat launch. Additionally, the property located to the north is developed with a public swim area. The applicant is not proposing any additional structures along the shoreline other than the proposed dock. This will limit the amount of visual impact to other properties in the vicinity. Based on the current character of the district, it does not appear the proposal will create a visual impact greater than what currently exists, and the view from the lake will be similar to other locations in the general vicinity.

Finding #11 – All three requested variances do not appear to create a visual impact discordant with natural scenic values because the proposed dock will be similar to others in the area, the applicant is proposing some landscaping while maintaining existing riparian vegetation, the subject property is located adjacent to an already established public boat launch and public designated swim area, no additional structures are proposed, and the view from the lake will be similar to other locations in the general vicinity.

f. Alter the characteristics of the shoreline.

The variance requested to extend the dock length on the subject property does not appear to significantly alter the characteristics of the shoreline. There will be a small unavoidable alteration of the shoreline in order to place the dock on the lakeshore, as there is no access to the subject property except over the lakeshore bank. However, the applicant is not proposing to remove all of the existing lakeshore vegetation, which will continue to maintain the shoreline and the soil stability, and a dock is a permitted activity within the Lakeshore Protection Zone. The two other variance requests regarding the amount of lakeshore frontage required for a private marina and the setbacks from the side riparian boundaries, also do not appear to alter the characteristics of the shoreline. The applicant is not proposing any additional structures on the property or within the Lakeshore Protection Zone, and they have not indicated there will be any retaining walls or other modifications of the shoreline

proposed. Additionally, the overall character of the area and lakeshore is relatively commercial except for the southern adjacent property, which is the only residential property in the vicinity. Therefore, it does not appear the proposed development would alter the characteristics of the shoreline more than what currently is established.

Finding #12 – The proposed variances do not appear to alter the characteristics of the shoreline because the applicant is not proposing to remove the existing lakeshore vegetation, the only alteration proposed at this time is the placement of the dock which is a permitted activity within the Lakeshore Protection Zone, no other structures are proposed on the property, and the general character of the district in the area is already established as commercial in nature.

V. SUMMARY OF FINDINGS

1. Due to a unique circumstance of the sloping shoreline, the strict enforcement of the requirements regarding the dock length could potentially result in a hardship because the slip located closest to the shoreline on the proposed dock would become unusable, the applicant is proposing a dock configuration which allows all the slips to be located on one side of the dock as required by the lakeshore regulations, and other docks located in the general area are similarly sized.
2. Due to the location of the subject property, it does not appear the applicant has an undue hardship regarding the amount of lakeshore frontage required for a private marina and the setbacks from the side riparian boundaries because the applicant could construct an individual residential dock of a similar size but not for use as a private marina, the subject property is located adjacent to existing public facilities including a public marina and boat ramp, and staff has no way to verify if there are any other properties for sale which do contain the required amount of lakeshore frontage.
3. Due to the unique characteristics of the subject property, the proposed extension to the dock is a reasonable request because of the gentle sloping of the shoreline, and dock configurations which allow slips on both sides of the dock are not permitted by the lakeshore regulations.
4. The request for a variance to the amount of lakeshore frontage required for a private marina and the setbacks from the side riparian boundaries do not appear to meet the criteria because one reasonable alternative is that no private marina is constructed on the subject properties given the proximity to adjacent lands, and another alternative is that a residential dock is built.
5. The proposed variances do not appear to diminish water quality within Flathead Lake because the applicant has indicated they will maintain their boats to reduce any impacts on water quality, there are no public restroom facilities, gas sales, or trash receptacles proposed on-site, all retail sales and service will be located on the west side of US Highway 93, and the applicant has stated they will not be increasing the amount of boat traffic in the area more than what currently exists since they already use the adjacent public launch and dock for part of their business.

6. The proposed variances do not appear to materially diminish habitat for fish or wildlife because the proposed dock will allow for free movement of water and marine wildlife to travel all around the dock, the applicant is not proposing to remove all of the existing vegetation, and the subject property is located adjacent to downtown Lakeside, which is already a developed commercial area and appears to be a better location for a private marina compared to other undeveloped or residential areas of the lake such as the North Shore.
7. Due to the unique characteristics of the subject property, the proposed extension to the dock is a reasonable request because of the gentle sloping of the shoreline, and the proposed dock will not encroach into Flathead Lake any more than the surrounding existing docks, so as not to impede boat traffic or navigation.
8. The proposed variances to the required minimum amount of lakeshore frontage and the side riparian boundary setbacks has the potential to interfere with navigation or other public recreation because the use is very similar to a parking area except for boats instead of vehicles, the proposed dock will only be located 40 feet from the northern side property line, the area is close to a designated public swimming area, and the amended Flathead County Ordinance No. 4 states that powered boats may not be within 50 feet of a designated swimming area.
9. The proposed variance request to the overall length of the dock does not appear to create a public nuisance because the dock will not be utilized by the general public, no residential structures are located directly adjacent to the dock, and the dock will be a similar length to others in the surrounding area.
10. The variance requested to the minimum amount of lakeshore frontage and the minimum setback requirements does have the potential to create a public nuisance because the proposed dock will only be located approximately 40 feet from the northern side riparian boundary which is directly adjacent to a public designated swim area, the amended Flathead County Ordinance No. 4 states power boats may not be within 50 feet of a designated swim area, and rental boaters may potentially be ticketed as they would not be aware of the amended regulations.
11. All three requested variances do not appear to create a visual impact discordant with natural scenic values because the proposed dock will be similar to others in the area, the applicant is proposing some landscaping while maintaining existing riparian vegetation, the subject property is located adjacent to an already established public boat launch and public designated swim area, no additional structures are proposed, and the view from the lake will be similar to other locations in the general vicinity.
12. The proposed variances do not appear to alter the characteristics of the shoreline because the applicant is not proposing to remove the existing lakeshore vegetation, the only alteration proposed at this time is the placement of the dock which is a permitted activity within the Lakeshore Protection Zone, no other structures are proposed on the property, and the general character of the district in the area is already established as commercial in nature.

VI. CONCLUSION

Section 5.1 of the Flathead County Lake and Lakeshore Protection Regulations states that a variance request shall be considered major when either the variance request deviates

substantially from the construction requirements or design standards of the regulations, or when the variance request creates a major environmental impact. As there are no criteria specified for review of a major variance, the requests have been reviewed under Section 5.1(A)(1) for minor variances and for the contents of the Environmental Impact Statement. Because of the complexity of the proposed private marina and its location to other public recreation areas in the vicinity, staff has attempted to establish a foundation of research and draft Findings of Fact, for the Boards to begin their consideration. The Planning Board and Board of County Commissioners, in reviewing all of the submitted application materials and comment submitted during the multiple public hearings, may choose to modify any or all of the proposed draft findings, in order to support their overall decision on the application.

VII. Conditions of Approval

If the Planning Board or Board of County Commissioners choose to approve the variance requests, below are the conditions of approval typical of similar projects within the Lakeshore Protection Zone, and specified within the Flathead County Lake and Lakeshore Protection Regulations.

1. The Lakeshore Protection Zone is defined as the lake, lakeshore, and all land within 20 horizontal feet of the average high water line.
2. Mechanized vehicles shall be allowed on the lakeshore only in connection with this project. Should any vehicle slice, gouge, or rut the beach, become stuck or expose clay, silts, and fine sands, said vehicle shall be immediately removed from the Lakeshore Protection Zone and an alternative procedure shall follow.
3. No vehicle shall come in contact with the lake water.
4. All construction debris shall be disposed of outside the Lake and Lakeshore Protection Zone in such a manner and in such a location so as to prohibit its reentry into the lake.
5. Temporary stockpiling of materials is prohibited in the Lakeshore Protection Zone.
6. No treated, stained or painted wood or materials are allowed within the Lakeshore Protection Zone.
7. All work will be completed during low water level to minimize any potential impacts to the lake.
8. Wet concrete shall not be poured into or allowed to come in contact with the lake water
9. This variance does not permit any additional construction in the lake or Lakeshore Protection Zone other than the requested dock.
10. Only one dock is allowed per waterfront property ownership.
11. No dock shall exceed eight (8) feet in width.
12. The dock must be setback a minimum of 40 feet from the northern riparian property line, and 70 feet from the southern riparian property line.
13. Treated wood, plywood, particle board or chipboard may not be used for any construction within the Lakeshore Protection Zone or over lake waters.

14. All wood shall be left in natural state, and no preservatives, varnish, stain, paint, linseed oil, diesel fuel, creosote may be applied.
15. Breakwater baffle boards may be placed along the sides of the dock to break wave action along open stretches of the dock; however, the boards shall be placed no closer than three (3) feet from the existing lake bottom or shoreline to allow for free movement of lake currents.
16. All docks shall be open or partially open.
17. The design standards for dockage shall be limited by and must comply with Section 4.3(A) unless otherwise modified.
18. The maximum length of each individual wing dock forming a boat slip shall not exceed 20 feet.
19. The overall density of boats/boatslips provided shall not exceed one boat/boatslip per 20 lineal feet of lakeshore frontage.
20. No retail sales or rental facilities shall be allowed on the site.
21. This permit shall not be construed as insurance that the project is located on the applicant's property. If the applicant is not the property owner, then consent must be granted by the property owner prior to any lakeshore construction.
22. This permit is issued under the authority of 75-7-201 et.seq. MCA and the Flathead County Lake and Lakeshore Protection Regulations. The permittee is responsible for obtaining all necessary permits as may be required under other Local, State, and Federal regulations.
23. Issuance and acceptance of this permit provides an unrestricted grant of access to Flathead County and its authorized designee across the above named property in order to inspect the work authorized herein, for one year.